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THE SOURCES FOR THE HISTORY OF THE PAPAL PENITENTIARY

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In the later Middle Ages the papal penitentiary was one of the most significant institutions of the central government of the Roman church. Originally simply the means for the administration of penance for the pilgrims and penitents who came to Rome, the sphere of the penitentiary was greatly extended in the course of the thirteenth century by the various decretals which reserved to the Pope the sole power of absolution and dispensation in the case of a large number of violations of ecclesiastical law and thus drew to Rome an ever-growing stream of offenders from every part of Catholic Christendom. To most of these petitions for relief it was quite impossible, and indeed unnecessary, for the Pope to give personal attention; the greater part of his jurisdiction was delegated to various officials, and finally to a cardinal major penitentiary, who had under him various minor penitentiaries, an expert doctor of canon law, and a whole body of clerical subordinates—*procuratores*, *scriptores*, *correctores*, *sigillatores*, *distributores*, etc.—the whole forming by the beginning of the fourteenth century a distinct and well-organized bureau of the papal administration. Down to the year 1569, when it was forced to give up its jurisdiction over the *forum externum* and confine itself to the *forum conscientiae*, this bureau was a very busy body, and it deserves study not only as a branch of the papal government, but also as an influence of the first importance upon the moral life of Europe.

Unfortunately, the existing accounts of the penitentiary are far from satisfactory. There is no monograph on the subject,¹ and the standard manuals and encyclopædias of ecclesiastical law and institutions give no adequate idea of the development of the penitentiary,

¹Petra, *De Sacra Poenitentiaria Apostolica* (Rome, 1712), is of very little use.

and treat with the greatest brevity the earlier and much more interesting period of its history.² Even the last twenty-five years, when research in the Vatican archives has been so fruitful for the study of every other phase of the history and organization of the church in the later Middle Ages, have produced comparatively little upon the penitentiary. Some light has, it is true, been thrown upon the formularies³ and taxes of the office,⁴ but no systematic explorations have been undertaken. Quite recently—indeed, since the present study was begun—indications have appeared of renewed interest in the history of the penitentiary,⁵ and there is reason to expect that the subject will soon receive from scholars something of the attention that it deserves. So long, however, as the sources remain for the most part unknown and unpublished, work must be carried on at a considerable disadvantage; and the present paper has been prepared in the belief that, as matters now stand, investigation can be most rapidly advanced by giving a general survey of the manuscript and printed material available for the history of the penitentiary, and noting some of the directions in which research can most profitably be pursued.

² The fullest accounts are in Phillips, *Kirchenrecht* (Regensburg, 1864), Vol. VI, pp. 508–26; Hinschius, *Kirchenrecht* (Berlin, 1869), Vol. I, pp. 427–32; von Scherer, *Handbuch des Kirchenrechts* (Graz, 1886), Vol. I, pp. 498–500; Moroni, *Dizionario di Erudizione Storico-ecclesiastica* (Venice, 1851), Vol. LII, pp. 58–80. See also Lea's introduction to his *Formulary* (see below) and his *History of Auricular Confession and Indulgences* (Philadelphia, 1896), Vol. II, pp. 161–67. As a sample of the treatment in the encyclopædias see the single sentence devoted to the subject in Hauck-Herzog, *Realencyclopädie*³, XI, p. 181.

³ Lea, *A Formulary of the Papal Penitentiary in the Thirteenth Century* (Philadelphia, 1892); Eubel, "Der Registerband des Cardinalgrosspönitentiars Bentevenga," *Archiv für katholisches Kirchenrecht*, Vol. LXIV (1890), pp. 3–69; Lecacheux, "Un formulaire de la pénitencerie apostolique au temps du Cardinal Albornoz," *Mélanges de l'École Française de Rome*, Vol. XVIII (1898), pp. 37–49.

⁴ Denifle, "Die älteste Taxrolle der apostolischen Pönitentiarie," *Archiv für Literatur- und Kirchengeschichte des Mittelalters*, Vol. IV (1888), pp. 201–38; Lea, "The Taxes of the Papal Penitentiary," *English Historical Review*, Vol. VIII (1893), pp. 424–38.

⁵ Göller, "Zur Geschichte der päpstlichen Pönitentiarie unter Clemens VI.," *Römische Quartalschrift*, Vol. XVII (1903), pp. 413–17; Lang, "Beiträge zur Geschichte der apostolischen Pönitentiarie im 13. und 14. Jahrhundert," *Mittheilungen des Instituts für österreichische Geschichtsforschung*, Ergänzungsband VII (1904), pp. 20–43; cf. also his *Acta Salzburgo-Aquilejensia* (in the "Quellen und Forschungen zur österreichischen Kirchengeschichte," Graz, 1903), Vol. I, p. xci.

In examining the sources for the history of the papal penitentiary the investigator is seriously hampered at the outset by the fact that the archives of the penitentiary are not open to examination and are likely to remain permanently closed to historical research. How much of value for the mediæval period is thereby withheld it is impossible to say, but the loss, though serious, is not fatal. Besides the material contained in the records of other departments of the papal administration, and the documents sent out from the penitentiary in the natural course of business, so much from the archives of the penitentiary itself has in one way and another wandered from its natural home into the library and archives of the Vatican and other depositories, that a body of sources of considerable extent and variety is available for illustrating the organization and activities of this bureau. As an organized department of the papal administration the penitentiary, like the Camera, was an offshoot of the chancery, and as such it naturally tended to adopt a similar form of organization and to keep its records in the same general way. So, like the chancery, the penitentiary had its originals and its registers, its manuals and formularies and tariffs of fees; and comparison of the similar types is well worth following out. The accessible records of the penitentiary, however, are much less abundant than those of the chancery, and in some fields documents seem to be almost entirely lacking.

In the first place, no one has yet attempted to collect or study the original letters issued from the penitentiary. Inasmuch as these related to individuals rather than to institutions and were of an essentially temporary sort, the chances of their preservation are much less than in the case of the bulls which emanated from the chancery; but if efforts are made, it ought to be possible to get together from the larger European archives and libraries a fair number of original acts of the penitentiary. The originals published from the archives at Vienna by Lang⁶—the only editor of papal documents who appears to have paid any attention to the penitentiary—show what we may expect when work in this direction is seriously undertaken. The earliest original which I have noted is a letter of the year 1217 issued under the seal of the penitentiary Nicholas of

⁶ Lang, *Acta Salzburgo-Aquilejensia*, Vol. I, Nos. 34*d*, 53*b*, 139*c*, 229*a*, 283*ab*, 292*b*, 339*a*, 372*a*, 389*a*. Cf. the introduction, pp. xxi, xci.

Casamari to those who accompanied Louis of France on his expedition to England.⁷

Concerning the registers of the penitentiary we are at present in almost total ignorance. Whereas the registers of the chancery are preserved in a practically continuous series since 1198, it is impossible to say when the penitentiary began to keep registers of its letters, or how many of such registers are now in existence. No doubt this is one of the points upon which the archives of the bureau could throw most light. The constitution of Benedict XII, which provides in much detail for the organization and procedure of the penitentiary,⁸ says nothing in regard to the registration of its acts; but the numerous letters contained in the formularies of the bureau presuppose some regular method of preserving them. We know that registers of letters and petitions were regularly kept in the time of Eugene IV, but we also know that these registers were not complete, for a bull of July 1, 1438, ordered that certain types of letters and petitions which had not previously been registered should henceforth be copied into the regular books.⁹ The only register to which attention has so far been called is a manuscript of Cardinal Bentevenga, pub-

⁷ Archives Nationales, J. 655, published by Teulet, *Layettes du Trésor des chartes* (Paris, 1863), Vol. I, p. 450, No. 1241. For other seals of the penitentiary see Teulet, Vol. III, p. 417, No. 4423; Douët d'Arcq, *Collection de sceaux* (Paris, 1867), Nos. 6247-50; Lang, *loc. cit.*, Nos. 34d, 229a. An original dispensation of 1454 is noted by Pastor, *Geschichte der Päpste*, Vol. I, p. 769, n. 1. See also the act of Egidius, penitentiary of Innocent IV, inserted in a bull of Alexander IV in Bourel de la Roncière, *Régestes d'Alexander IV* (Paris, 1902), No. 25.

⁸ Constitution *In agro dominico*, edited by Denifle, *Archiv für Literatur- und Kirchengeschichte*, Vol. IV, p. 209.

⁹ "Recensentes quod ex eo quod nonnulle littere per penitentiariam nostram petentibus concedi solite, videlicet que absolutionem ab excommunicationis sententia aut dispensationem super irregularitate continent et que de sententiis generalibus pro presentibus in forma assertive et *Si inveneris* pro absentibus et que *Licet non credat vel recolat* pro eisdem presentibus et absentibus et que declaratorie nuncupantur, sive earum supplicationes, non registrabantur, de quibus cum forte eas perdi contingeret sufficiens in Romana curia vel alibi fides fieri non poterat; Voluimus et ordinavimus quod predictae sicut alie eiusdem penitentie littere sive earum supplicationes in libris solitis extunc inantea debite registrarentur prout iam registrantur."—Bull *Prudens paterfamilias* of July 1, 1438. Vatican Library, Fondo Vaticano, MS Lat. 3994, f. 88; MS Lat. 5744, f. 101 v; MS Reg. Svec. 1796, f. 133v.

lished by Eubel,¹⁰ which contains various documents issued by him as major penitentiary between the years 1279 and 1289. Even this volume, analogous in some ways to the registers of cardinal legates which have come down from the thirteenth century,¹¹ is not properly a register, but, as its editor has pointed out, has rather the character of a formulary, being designed to present significant types of documents rather than to record the activity of an office.

While, then, there is but little that is available in the form of originals or registers, we are much more fortunately situated in regard to the ordinary working-tools of the bureau, from which information concerning its organization and practice must chiefly be sought. Every *scriptor* was required, within two months after he entered upon his duties, to provide himself with a copy of the tax-list of the penitentiary and of the papal constitutions relating to it, and within six months he was obliged to possess a copy of the faculties and concessions defining the powers of the major and minor penitentiaries, as they were to be found in the *Liber penitentie*, as well as the official formulary of the penitentiary and the formulary of minor letters.¹² We must now inquire what these various works were, and how they have come down to us.

¹⁰ Eubel, "Der Registerband des Cardinalgrosspönitiars Bentevenga," *Archiv für katholisches Kirchenrecht*, Vol. LXIV (1890), pp. 3-69. For a similar formulary drawn up from the register of Cardinal Albornoz, see the *Mélanges de l'École Française de Rome*, Vol. XVIII (1898), pp. 37-49.

¹¹ Levi, *Registri dei Cardinali Ugolino d'Ostia e Ottaviano degli Ubaldini*, Rome, 1890 (in the "Fonti per la Storia d'Italia"). Hampe, "Aus einem Register des Cardinals Ottobonus von S. Adrian," *Neues Archiv*, Vol. XXII, pp. 337-72; Graham, "Letters of Cardinal Ottoboni," *English Historical Review*, Vol. XV (1900), pp. 87-120. Register of Guido de Sabina, legate in England in 1264, in Heidemann, *Papst Clemens IV.* (Münster, 1903), pp. 182-248.

¹² "Item quilibet scriptor novus infra duorum mensium spacium a die receptionis sue copiam constitutionis felicis recordationis domini Benedicti pape xii et copiam taxationum litterarum penitentie et aliarum constitutionum super officio penitentie editarum et edendarum, et infra quatuor mensium spacium a lapsu dictorum mensium computando potestatem maioris et minorum penitentiarii et concessionibus de generali et de speciali que scripte sunt in libro penitentie, necnon formularium litterarum penitentie correctum et reformatum de mandato felicis recordationis domini Benedicti pape xii predicti. . . . formularium quoque litterarum minoris officii penitentie infra eundem terminum quatuor mensium teneantur habere, et pro posse alia que eis ad usum et exercitium dicti officii fuerint opportuna."—Ravenna, MS 470, f. 26v; Vatican, Fondo Vaticano, MS Lat. 2663, f. 36v.

From the account just given of the contents of the *Liber penitentie* it seems clear that this name was applied to a kind of manual for the use of the bureau which resembled in some respects the *Liber provincialis* of the chancery.¹³ In some of the manuscripts of this manual it is called a "formulary," but the name is plainly incorrect, as the compilation is not a set of forms, but a collection of acts of Popes and penitentiaries relating to the jurisdiction and functions of the office. There are three principal editions of this manual, belonging respectively to the fourteenth, fifteenth, and sixteenth centuries. The first was issued April 8, 1338, by direction of Benedict XII, in connection with his reorganization of the bureau.¹⁵ It begins with this Pope's new statute for the penitentiary—the constitution *In agro dominico*—and the new tax-list prepared by his authority.¹⁶ These are followed by the privileges of the penitentiaries, the regulations adopted by them for their own government, and a calendar of the days when they do not sit to hear confessions.¹⁷ Then comes a document of prime importance, the so-called *Summa* of Nicholas IV, issued in 1291 and modified to some extent by the Popes of the next half-century, which defines the powers of the major

¹³ On which see Erler, *Der Liber Cancellarie Apostolicæ vom Jahre 1380* (Leipzig, 1888); Bresslau, *Urkundenlehre*, Vol. I, pp. 253 ff.; and Tangl, *Die päpstlichen Kanzleiordnungen* (Innsbruck, 1894).

¹⁴ "Formulare penitenciariorum editum in Avinione ex ordinatione et mandato sanctissimi domini nostri domini Benedicti divina providencia pape xii sexto ydus aprilis pontificatus eiusdem anno quarto."—Vatican Library, MS Reg. Svec. 1796, f. 1; Fondo Vaticano, MS Lat. 3994, f. 1; MS Lat. 5744, f. 3; University of Rome, MS 119, f. 3. In MS 583 of the library of the University of Graz, ff. 1, 30v, it is called "liber seu formularius."

¹⁵ This redaction is found in MS Lat. 415 of the Hofbibliothek at Vienna, ff. 1–37v (fourteenth century, parchment, 121 folii), where it precedes the formulary proper of Benedict XII, and in two manuscripts of the fourteenth century in the library of the University of Graz: MS 583, paper, completed in 1393 (cf. Lang, *Beiträge*, p. 23, note, where the number is wrongly given as 538); and MS 1430, parchment, 108 folii, written before 1381 and containing some additional matter (evidently not seen by Lang). It also forms the first part of the later redactions of the *Liber* in all the MSS cited below. See also MS Vat. Lat. 6290, ff. 4–42v; MS. Ottoboni 333, ff. 83ff.

¹⁶ Both are printed by Denifle in the *Archiv für Literatur- und Kirchengeschichte des Mittelalters*, Vol. IV, pp. 209 ff. On the tax-list see below, p. 444.

¹⁷ Thus in MS Vat. Lat. 3994: f. 18v, "Privilegia penitenciariorum;" f. 19, "Secuntur ordinationes penitenciariorum ad bonum regimen eorundem;" f. 23v, "Quibus diebus penitenciarum non sedent."

and minor penitentiaries, and enumerates the cases which fall within their respective spheres of activity.¹⁸ The second redaction¹⁹ starts with the manual as it existed in the time of Benedict XII, and carries it through the next hundred years, adding the new concessions and reservations of the Popes and the statutes of the major penitentiaries, as well as various extracts from the canon law, from Gratian to the Clementines, dealing with matters which concerned particularly the duties of the penitentiary.²⁰ The manuscripts close with the legislation of Eugene IV for the penitentiary and the statutes of the major penitentiary, Jordanus Orsini.²¹ The third redaction is a

¹⁸ This forms the central point of Lang's *Beiträge zur Geschichte der apostolischen Pönitentie*.

¹⁹ The redaction made in the time of Eugene IV is found in the following Vatican MSS of the fifteenth century: Fondo Vaticano, MS Lat. 5744, paper, 106 folii (f. 104v, "Explicit formulare totum Deo gratias. Fuit completum die ii^a Augusti anno domini M^o cccc^o xlix^o Rome)". MS Lat. 3994, parchment, 90 folii, formerly (f. 90v) the property of a cardinal of Santa Croce (probably Dominicus Capranica, to whom MS Ravenna 470 likewise belonged). Reg. Svec. MS 1796, paper, not foliated, but containing 140 folii. This redaction also forms the first part of the sixteenth-century redactions mentioned below, in one of which the signature of the scribe has been copied (University of Rome, MS 119, f. 87): "Ad mandatum reverendorum dominorum penitentiarius minorum domini nostri pape ego minimus frater Michael Benedicti ordinis Cisterciensis transcripsi formulare istud ab antiquo officii penitentiarius formulario fideliter integre et complecte. Florentii anno domini M^o cccc^o xl, die xxiii septembris, pontificatus domini nostri domini Eugenii pape quarti anno decimo, existente priore penitentiarius fratre Rodolfo Johannis de civitatis (*sic*) Castelli."

²⁰ Some of these additions are found in MSS of the first redaction of the *Liber* (MSS Graz, 583, f. 18, and 1430, ff. 65, 65v: "Explicit formularius penitentie. Incipit decretum abbreviatum"), and are noted by Lang, *Beiträge*, pp. 24-29. Worthy of note is the statute of the major penitentiary, John, cardinal priest of SS. Nereo and Achilleo, dated July 18, 1374. MS Vat. 3994, f. 81; MS Reg. Svec. 1796, f. 122.

²¹ "Sequitur institutio penitentiarius sub certo numero per dominum Eugenium quartum et de privilegiis immunitatibus exemptionibus per eundem dominum papam eisdem penitentiariis concessis. Eugenius episcopus servus servorum Dei. Ad perpetuam rei memoriam. Ad sacram Petri sedem . . . Datum Florentie anno incarnationis domini millesimo quadringentesimo tricesimo quinto, decimo septimo kalendas novembris, pontificatus nostri anno quinto.

"Sequitur statutum et ordinatio reverendissimi domini Jordani de Ursinis miseratione divina episcopi Sabinensis cardinalis et maioris penitentie domini pape Eugenii iiii super receptione et examinatione minorum penitentiarius. In nomine Domini Amen. Die quinta decima mensis octobris anno domini M^o cccc tricesimo quinto. . . .

"Hic sequitur bulle emolumentorum assignatorum penitentiariis per sanctissimum dominum nostrum Eugenium papam quartum. Eugenius episcopus servus

copy of the second,²² which takes up the continuation with the bull *Provida Romani* of Sixtus IV, November 1, 1473, and ends with a breve of Julius III of March 1, 1552.²³

Different from any of these redactions, and containing some additional material, is a kind of manual prefixed to the formulary which was prepared by Walter of Strassburg at the beginning of the Schism and used far into the fifteenth century. Besides a provincial and the *In agro dominico* and tax-list, this contains various *constitutiones et statuta officii*, rules to be observed in drawing up letters, and the detailed series of concessions to the major penitentiaries and their substitutes under Urban V, Gregory XI, and Urban VI,²⁴ supplemented in one manuscript by faculties and constitutions of Popes from Nicholas V to Paul II.²⁵

The capital importance of the *Liber penitentiarius* for the history of the penitentiary is at once evident from this brief indication of servorum Dei dilectis filiis collegio minorum penitentiarius capellanorum nostrorum curiam Romanam sequentium salutem et apostolicam benedictionem. Devotionis vestre sinceritas . . . Datum Florentie anno incarnationis dominice millesimo quadringentesimo tricesimo quinto, decimo septimo kalendas novembris, pontificatus nostri anno quinto.

"Sequitur bulla secunde gratie eisdem minoribus penitentiariis facta per dominum nostrum Eugenium papam quartum. Eugenius episcopus servus servorum Dei. Ad perpetuam rei memoriam. Prudens paterfamilias . . . Datum Ferrarie anno incarnationis dominice millesimo quadringentesimo tricesimo octavo, kalendis julii, anno octavo."

Fondo Vaticano, MSS Lat. 3994, ff. 83v-88; 5744, ff. 95-102v; 6347, ff. 195-202; MS Reg. Svec. 1796, ff. 126v-135v. For collating these MSS. I am indebted to the abbé J. Fraikin.

²² "Hucusque durat liber Vaticanae Bibliothecae." MS Vat. Lat. 6347, f. 204v. Cf. the signature at the end of this portion of MS 119 of the University of Rome, printed above, note 19.

²³ The redaction which brings the manual down to the pontificate of Julius III, is found in the Vatican library, Fondo Vaticano, MS Lat. 6347, ff. 99-235; in the Vatican archives, Biblioteca Borghese, Ser. IV., No. 14, paper, 127 folii; and in the library of the University of Rome, MS 119, paper, 115 folii. The last-named MS is cited by Petra, *De Sacra Poenitentiaria Apostolica*, but he plainly made small use of it.

²⁴ Vatican, Fondo Vaticano, MS Lat. 2663, ff. 4-71; MS Lat. 5737, ff. 1-63; Ravenna MS 470, ff. 1-52, and cf. ff. 264v-311v. On these MSS see below, note 74.

Attention should also be called to the "Beilage A" to Lang's *Beiträge*, printed from a MS in Graz, and to the material from the years 1429 to 1461 in the MS of the *Lumen Confessorum* in the library of St. Peter's (*Römische Quartalschrift*, Vol. XI, p. 273).

²⁵ MS Ravenna 470, the first two (unnumbered) folii.

its contents. Nowhere else can we trace the organization of the bureau and the functions of its various officials, as they were developed and modified at the hands of successive Popes and major penitentiaries—a field of investigation in which almost everything still remains to be done. But while the *Liber penitentie* shows us the structure of the institution, it is to the formularies that we must turn for its actual workings as an element in the moral government of the Papacy. Before the formularies can be used to advantage, it is, however, necessary to distinguish the different types and the successive redactions in which they appear.

The earliest known formulary of the penitentiary is the *Forme Romane curie composite a magistro Thomasio bone memorie presbitero cardinali super casibus penitentie*, discovered and published by Henry C. Lea in 1892.²⁶ As this has been printed in full, with elaborate introduction and notes, it is not necessary to dwell upon its contents here further than to say that it is a general collection of forms of letters for the use of the officers of the penitentiary, comprising 355 forms, distributed under 179 rubrics, which cover the various types of cases coming before the bureau in its administration of penance. In many of the forms the statement of the facts of the case is fairly full and specific, so that characteristic traits of the social and moral conditions of the time appear more frequently than in the later formularies. Lea assigns the forms to the second quarter of the thirteenth century, and ascribes the authorship of the collection to Jacobus Thomasius Gaetanus, cardinal priest of S. Clemente from 1295 to 1300. The editor's conclusion regarding the period to which the forms belong is sound, and perhaps sufficiently definite, although in the case of such letters as furnish specific indications of date the chronological limits may be drawn somewhat closer. With one possible exception,²⁷ there is no reason why any of these

²⁶ Lea, *A Formulary of the Papal Penitentiary in the Thirteenth Century* (Philadelphia, 1892). I have collated the text with the manuscript in Mr. Lea's possession, and have searched without success for other copies. It is remarkable that the only manuscript which has been found of the earliest known monument of the penitentiary should be in Philadelphia.

²⁷ No. CXXI may very well be anterior to 1234, when the principle involved received its final formulation in the Decretals of Gregory IX (C. 9 X. de cons. et aff., IV, 14; ed. Friedberg, Vol. II, col. 704). Cf. Thaner, in *Göttingische Gelehrte Anzeigen*,

should necessarily be placed before 1234, while those which mention the *novum jus* of Gregory IX²⁸ and the legateship of the archbishop of Ravenna in the Holy Land²⁹ cannot be earlier than this year. Subsequent events to which reference is made are the town and gown riot at Orleans in 1236,³⁰ the levy of 1238 for the aid of the Latin empire,³¹ and the troubles with the king of Portugal³² in 1238 and 1239. The forms addressed to Robert le Bougre fall after 1233, and probably after 1235.³³ The latest date³⁴ which we are compelled to assign to any of the forms appears to be the vacancy in the see of Lisbon in 1243 and the beginning of 1244.³⁵ On the other hand, of the cardinals mentioned, John of S. Prassede³⁶ died in 1245, Jacobus of Palestrina³⁷ in 1244, and Thomas of Capua³⁸ in 1239, 1893, p. 901. The problem was an old one in Dalmatia; Richter, *Kirchenrecht*⁸ (Leipzig, 1886), p. 1088, n. 18.

I can see no decisive ground for Lea's identification of the bishop of Norwich to whom No. LXXVI is addressed with Bishop Pandulph, who died in 1226.

²⁸ No. LI.

²⁹ No. LXIII.

³⁰ No. XV, 3. Lea relates this to the troubles with the Pastoureaux in 1251, but there was a serious disturbance in 1236, and the dates of the other letters in the collection make it more likely that the reference is to this event. See Fournier, *Statuts et privilèges des universités françaises* (Paris, 1890), Vol. I, p. 3.

³¹ No. LXIV. Cf. Norden, *Das Papsttum und Byzanz* (Berlin, 1903), p. 284.

³² No. XCI. No. VI, 2, was probably issued after the vacancy in the see of Burgos which extended from 1238 to 1240, and No. VII in the vacancy at Limoges between 1236 and 1240.

³³ Nos. XXXV, 1, 2; XXXVIII, 2. See Haskins, "Robert le Bougre and the Beginnings of the Inquisition in Northern France," *American Historical Review*, Vol. VII (1902), pp. 437-57, 631-52.

³⁴ Lea (p. xxxiii) assigns No. XLI to 1255 or later, but Fredericq has shown that the papal constitution here cited was issued as early as 1231 (*Corpus Inquisitionis Neerlandicae*, Ghent, 1896, Vol. II, No. 21).

³⁵ No. XCI, 2. The interdict mentioned in this form was laid early in 1238 and remained in force until the following year. The bishop's death would seem to have occurred early in 1243, as the dispute over the choice of his successor had gone on for some time before October of that year and was not settled until March 1, 1244. See Raynaldi, *Annales*, 1238, Nos. 48-51, 1239, Nos. 59-63; Potthast, *Regesta*, Nos. 10966, 11162; Berger, *Régestes d'Innocent IV* (Paris, 1884), Vol. I, No. 521; Eubel, *Hierarchia Catholica* (Münster, 1898), p. 535.

³⁶ Nos. LXIV; LXVI, 2; LXVII.

³⁷ Nos. LXXVI, 2; LXXXVI. His legateship in Hungary was in 1232 and 1233; if he was still bishop-elect when No. LXXVI, 2, was issued, this form would be anterior to his consecration in 1235.

while Gaufredus of S. Mark's³⁹ was translated to the see of Sabina in 1239. The letter addressed to the Franciscan general Elias⁴⁰ obviously antedates his deposition in 1239, and the mention of the proposed crusade of Simon de Montfort⁴¹ cannot be later than the earlier months of 1240. So far as it is possible to judge the collection as a whole from the forms which can be dated with some degree of accuracy, it falls within the years 1234 and 1243; indeed, as only one case carries us beyond 1240, we may say that practically all of the datable matter belongs to the latter half of the pontificate of Gregory IX.⁴²

The attribution of the formulary to Jacobus Thomasius Gaetanus seems to rest solely upon the name Thomasius, but, as a matter of fact, this cardinal was currently known as Jacobus and not as Thomasius.⁴³ There is nothing to connect him with the penitentiary, Matthias of Acquasparta having been major penitentiary during his cardinalate; and it would be quite remarkable that anyone should make up a formulary at the end of the thirteenth century from material more than fifty years old without including any of the forms of the later thirteenth century which appear in such numbers in the formulary of Benedict XII. It is much more natural to seek the author of the collection in the period to which the forms belong, and in the person of the only cardinal priest of the name in that period, the well-known Thomas of Capua,⁴⁴ cardinal priest of S. Sabina from

³⁸ Nos. XXVIII, 3; LXIII; LXVI; CXLV, 2; CLXXII, 7. See below, n. 45.

³⁹ No. XXXIV, 3, where the MS has G. as the cardinal's initial.

⁴⁰ No. CL.

⁴¹ No. XXXV, 2. See *American Historical Review*, Vol. VII, p. 639, n. 6.

⁴² In the MS the formulary of the penitentiary follows immediately after a body of *Forme Romane curie super beneficiis et questionibus*, which occupies the first seventy-nine folii. This extensive collection contains a great variety of forms of dispensations, indulgences, collations to benefices, etc., of the time of Gregory IX and Innocent IV; at the end several folii are given up to the privileges granted by Honorius III to the Teutonic Knights.

⁴³ Kirsch, *Die Finanzverwaltung des Kardinalkollegiums* (Münster, 1895), pp. 58, 102, 103, 114, 115, 120, 121, 124; Baumgarten, *Die Camera Collegii Cardinalium* (Leipzig, 1898), pp. 105, 108, 130, 131, 132.

⁴⁴ He is styled *magister* in various manuscripts of his *Summa* (*Archiv für Literatur- und Kirchengeschichte*, Vol. I, pp. 36, 361); Thomas and Thomasius are often interchanged in the thirteenth century. Eubel, *Hierarchia*, p. 4, following an unsupported

1216 to 1239. He appears five times in the formulary,⁴⁵ more often than any other cardinal, as receiving letters or transmitting the Pope's instructions in affairs of the penitentiary; and from a chronicler who speaks of him as acting in the place of the Pope in hearing confessions and granting absolution to offenders in 1223, it is clear that he was, in that year at least, the chief official of the penitentiary.⁴⁶ When we consider further that he was skilled in the art of composition above all other members of the Curia⁴⁷ and was the author of a popular *Summa Dictaminis*,⁴⁸ we need have no further hesitation in concluding that he was the author of the formulary of the penitentiary published by Lea, and in speaking of it henceforth as the formulary of Thomas of Capua.

Furthermore, there is good reason for thinking that this formulary came to be known in the penitentiary as the "original formulary" of the office, for a *scriptor et corrector* of the late fourteenth century, Walter of Strassburg, speaks of the "correction of the original for-

statement of Ciacconius, gives the date of his death as August 22, 1243, but Richard of San Germano, who ought to know, says he died August 18, 1239 (*Monumenta Germaniae Historica, Scriptores*, Vol. XIX, p. 378), and most recent writers accept Richard's statement. See Böhmer-Ficker, *Regesta*, No. 2271; Fehling, *Kaiser Friedrich II und die römischen Cardinäle* (Berlin, 1901), p. 78. The fact that two or three of the letters in the formulary seem subsequent to 1239 does not invalidate the conclusion that the body of the collection is the work of Thomas of Capua.

⁴⁵ Nos. XXVIII, 3; LXIII; LXVI; CXLV, 2; CLXXII, 7. Cf. Souchon, in *Historische Zeitschrift*, Vol. LXXIII, p. 87.

⁴⁶ "Qui summi vice pontificis peccamina punit.

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Dic Jacobo, pape vice qui delicta reorum

Audit, et absolvit confessos rite reatus,

Congrua diversis adhibens medicamina morbis."

Guillaume le Breton, *Philippéide*, XII, ll. 721-38 (ed. Delaborde, Paris, 1885, p. 376). As Delaborde points out, there is here a confusion of name between Cardinal Thomas and the citizen Jacobus at whose house he was staying in Segni. His name and title appear correctly in two other narratives of the same incident, which do not, however, mention his connection with the penitentiary: "Chronicon Turonense," *Historiens de France*, Vol. XVIII, p. 304; Gilles de Pontoise, in Duchesne, *Historiae Francorum Scriptores*, Vol. V, p. 260.

⁴⁷ "Melior dictator de curia."—Salimbene, *Chronica* (Parma, 1857), pp. 66, 194.

⁴⁸ There are numerous manuscripts; extracts have been published by Hahn, *Collectio Monumentorum* (Brunswick, 1724), and by Hormayr, in the *Archiv für Geographie, Historie*, etc., 1821, Nos. 129 ff.

mulary of the penitentiary" by the commission appointed by Benedict XII whose labors resulted in the so-called "new formulary" of that Pope.⁴⁹ The close relation between these two collections, both in contents and arrangement, makes it altogether likely that the earlier formed the basis of the later,⁵⁰ and until some other formulary anterior to that of Benedict XII shall have been discovered, we are justified in assuming that we have been dealing with the earliest formulary of the penitentiary, or at least with what came to pass for such in the bureau itself.

The "correction and reformation" of the official formulary of the penitentiary under Benedict XII was a natural part of the measures taken by this Pope for the reorganization of the bureau. The task was intrusted to a commission of doctors of canon and civil law, composed of the cardinal major penitentiary, Gaucelinus; Gotius, patriarch of Constantinople; Jacobus, bishop of Brescia; and William, abbot of Montolieu.⁵¹ No date of publication accompanies the revised formulary, but inasmuch as Benedict's new constitution for the penitentiary and the new tax-list were promulgated April 8, 1338,⁵² it is probable that the closely related formulary was issued at

⁴⁹ "Post correctionem formularii originalis penitenciarie domini nostri pape de mandato felicitis recordationis domini Benedicti pape xii per bone memorie dominos Gaucelinum . . ."—Formulary of Walter of Strassburg, Vatican Library, Fondo Vaticano, MS 2663, f. 72. See the passage in full below, note 73.

Lang (*Beiträge*, p. 26, note) infers from the *Incipit* of the formulary of Benedict XII (see below) that the "novum formularium" existed before its revision under that Pope. This is a possible inference from the language used, but the passage just cited shows that this interpretation is wrong, and that it was the revision which produced the "new formulary."

⁵⁰ The obvious relation between the specimens of Benedict's formulary published by Dönfle in 1888 (see below) and certain of the forms in Lea's *Formulary* was noticed when the latter collection was first published. See Friedberg in *Zeitschrift für Kirchenrecht*, Vol. III (1893), p. 73; Thaner in *Göttingische Gelehrte Anzeigen*, 1893, p. 901; and cf. Haskins in *American Historical Review*, Vol. VII (1902), p. 440, n. 2.

⁵¹ "Incipit novum formularium officii penitenciarie domini pape correctum et reformatum de speciali mandato domini Benedicti pape xii per reverendos in Christo patres dominos Gaucelinum episcopum Albanensem, Gocium patriarcham Constantinopolitanum, Jacobum episcopum Brixensem, et Guillelmum abbatem monasterii Montis Olivi, professores iuris canonici et civilis."—Vatican, Fondo Vaticano, MS Lat. 5959, f. 13; Vienna, MS 415, f. 45. Also, but without the name of the abbot of Montolieu, in MS Ottoboni 333, f. 1 (really f. 7); Bibliothèque Nationale, MS Lat. 4323, f. 10. The MSS of Tours and Avignon have no such *Incipit*.

⁵² *Archiv für Literatur- und Kirchengeschichte*, Vol. IV, pp. 220, 236.

the same time. In any event, it cannot have been published before February 20, 1336, the date of the consecration of Gotius as patriarch,⁵³ or after December 18, 1338, when he and Abbot William were raised to the cardinalate; indeed it can hardly be later than July, 1338, when Gotius was sent as legate to Sicily⁵⁴. Denifle discovered a copy of this formulary in 1888 at Tours, and published some indication of its contents,⁵⁵ but as this manuscript had no title or *Incipit*, he did not discern its authorship and date, which he might have found, to go no further, in two manuscripts of the Vatican. I have seen five other manuscripts of the formulary,⁵⁶ and on the basis of these six—and perhaps others that

⁵³ Vidal, *Lettres communes de Benoît XII*, No. 3695.

⁵⁴ *Ibid.*, Nos. 6318, 6377–80, 6383–6407, 6479.

⁵⁵ *Archiv für Literatur- und Kirchengeschichte des Mittelalters*, Vol. IV, pp. 205–9. Cf. *Catalogue des MSS des Départements* (Paris, 1900), Vol. XXXVII, p. 478. The MS, No. 594, is of the fourteenth century and contains 539 forms, of which the last nine are additions to the body of the formulary. The numbering of the forms does not agree with that in the Vatican and Vienna MSS, nor is the order always the same as in those.

⁵⁶ Vatican, Fondo Vaticano, MS Lat. 5959, parchment, fourteenth century, 122 folii. Ff. 1–9, table of contents. F. 13, “Incipit novum formularium. . . .” F. 110 (after No. 529), “Et hic est finis formularii penitentie domini pape.” F. 122v, “Explicit novum formularium.” Five hundred and fifty numbered forms and twenty additional. This is one of the best MSS.

Vienna, MS 415, fourteenth century, parchment, 121 folii. F. 38, “Incipiunt rubice (*sic*)” F. 45, “Incipit novum formularium” F. 111, “Et hic est finis formularii penitentie domini pape, Deo gratias Amen.” Then follows in red “Forme de novo addite et extravagantes.” F. 120v, “Explicit novum formularium” F. 121, a letter of Franciscus de Aptis as major penitentiary to the dean of the church of SS. Simon and Jude in Goslar, dated Avignon, April 13, 1360. This MS resembles closely the preceding. On the contents of ff. 1–37, cf. above, note 13, and Lang, *Beiträge*, pp. 23 ff.

Vatican, MS Ottoboni 333, ff. 1–83, parchment, six numbered and 150 numbered folii. Last unnumbered folio, “Hoc opus patravit clericus Johannes a Bonis Sancti Flori dyocesis quadragesimo vi^o anno.” F. 1, “Incipit novum formularium” The forms, which are not numbered, extend without a break to f. 83, and correspond with slight exceptions to those in the two preceding MSS. The MS also contains much of the material of the *Liber penitentie* and near the end (ff. 137–148v) a series of forty-six additional forms, chiefly in the name of Gaucelinus. This is not so good a MS as the two preceding; the rubrics are carelessly written, and are often inaccurate as summaries of the forms to which they refer.

Paris, Bibliothèque Nationale, MS Lat. 4323, parchment, fourteenth century, 103 folii. The MS is incomplete at the beginning and at the end, where it breaks off

may have eluded me—it is to be hoped that someone will prepare a critical edition. The five hundred and thirty forms of which the formulary proper consists⁵⁷ are grouped under rubrics which are generally the same and follow the same order as in the formulary of Thomas of Capua. Most of the forms of the earlier collection are reproduced with little or no change, except for the tendency to omit proper names and specific events which is characteristic of the transmission of all formularies through successive copies or redactions; but occasionally a form is marked as “superfluous,” “unsuitable,” or “useless.”⁵⁸ Many of the new forms naturally reflect the events of the hundred years which have intervened since the days of Thomas of Capua. Constitutions of Clement IV, Gregory X, and Boniface VIII are cited,⁵⁹ and among the various enemies of the Roman see we find Manfred, prince of Taranto, Guido of Montefeltro, Conrad of Antioch, Palæologus and the Genoese, Frederick of Aragon and the Sicilians.⁶⁰ The names of two cardinal penitentiaries frequently appear, Matthias of Acquasparta,⁶¹ who seems to have followed Bentevenga in 1290,⁶² and his successor Gentilis.⁶³

in the middle of No. 541, although the table of contents extends through No. 566 *bis* of the Vienna MS. The forms are numbered only as far as No. 42, where the hand changes.

Avignon, MS 336, fourteenth century, paper, 55 folii. Except for the first five, which were evidently on a lost folio, the forms, none of which are numbered, correspond to those in the Vienna and Vatican MSS. Ff. 54–55v contain sixteen additional forms, some in the name of Gaucelinus, the last, in a different hand, but likewise of the fourteenth century, being a letter of the major penitentiary Stephen (evidently Stephen Alberti, who succeeded Gaucelinus in 1348) to the monastery of Fossanuova, which Labande in his description of the MS makes the curious slip of mistaking for “une bulle inédite du pape Étienne IX” (*Catalogue des MSS des Départements*, Vol. XXVII, p. 247).

⁵⁷ See the brief summary of contents given by Lang, *Beiträge*, pp. 42, 43. According to Lang, *Acta Salzburgo-Aquilejensia*, Vol. I, p. xci, Dr. Pogatscher, of the Austrian Institute, is studying the Ottoboni MS.

⁵⁸ “Ista forma tanquam inepta fuit per dictos reprobata” (No. 2 = Lea, I). “Hec forma fuit tanquam inutilis reprobata” (No. 86). “Superflua” (Nos. 449 and 452—in MS Ottoboni 333 only, ff. 63, 63v).

⁵⁹ Nos. 289, 336, 362. Boniface VIII is also mentioned in Nos. 299 and 431. (The numbering is different in the Tours MS; cf. Denifle, *op. cit.*, p. 208).

⁶⁰ Nos. 260–69 (in MS Tours, Nos. 229 ff.; cf. Denifle, *op. cit.*, p. 207).

⁶¹ Nos. 77, 134, 136, 139, 175, 191, 249, 251, 268–71, 351, 355, 361, 362, 365, 367, 369, 436, 439, 457, 458, 460, 468, 469, 503.

⁶² Lang, *Beiträge*, p. 23.

⁶³ Nos. 76, 252, 277, 299, 311, 379, 440, 480.

The new formulary of Benedict XII needed very soon to be supplemented in order to provide for the demands of the office, and all the manuscripts contain at the end a greater or lesser number of *Forme de novo addite et extravagantes*.⁶⁴ These are generally in the name of Gaucelinus as penitentiary, but the appearance of his predecessor Berengar in two of them⁶⁵ shows that there were older forms of value which had not been included in the new edition. Moreover, one manuscript contains a second collection of forty-six forms,⁶⁶ at least two of them subsequent to the death of Benedict XII in 1342, but the greater number still in the name of Gaucelinus, who remained in charge of the penitentiary until 1348.⁶⁷ After his death it is more difficult to trace the additions made to the formulary, especially as the names of the penitentiaries of this time are rarely preserved in the formularies of the next period. We have individual acts of the successor of Gaucelinus, Stephen Alberti,⁶⁸ and of Franciscus de Aptis,⁶⁹ as well as a sort of formulary drawn up for the use of Cardinal Albornoz on the basis of the register of his letters as major penitentiary in 1357 and 1358.⁷⁰ The frequent concessions made by the Popes of this period involved the modification of old forms and the drawing up of new ones, until the number of these *forme extravagantes*, scattered about without order in various volumes and loose sheets, seriously complicated the work of the office. The difficulties of the

⁶⁴ The Vienna MS (f. 111) is the only one which contains this heading, but there is a break at this point in MS Vat. 5959, f. 109v, and MS Paris 4323, f. 99v. There are ten additional forms in the Tours MS, forty in the Vatican and Vienna MSS, and fifty-five in the MS of Avignon. Part of the Paris MS is missing at the end.

⁶⁵ Nos. 549, 551.

⁶⁶ MS Ottoboni 333, ff. 137-148. Some of the forms are in the name of Frater Johannes or Frater . . . On ff. 141v and 142v mention is made of Benedict as of blessed memory; on f. 143v is a form which falls before the death of Louis the Bavarian in 1347. One of these forms is printed by Lang, *Acta Salzburgo-Aquilejensia*, Vol. I, p. 171, No. 226.

⁶⁷ Lang, *op. cit.*, Vol. I, p. 300, No. 389a.

⁶⁸ MS Avignon 336, f. 55v. For the date when Stephen is found in office, see the document in Lang, *op. cit.*, Vol. I, p. 300, No. 390.

⁶⁹ MS Vienna 415, f. 121. Cf. MS Vat. 2663, ff. 112-117v.

⁷⁰ Preserved in the papers of Albornoz in the College of Spain at Bologna and analyzed by Lecacheux in the *Mélanges de l'École Française de Rome*, Vol. XVIII (1898), pp. 37-49. Cf. also Filippini in the *Studi Storici*, Vol. VIII (1899), p. 498.

bureau were greatly increased for the Roman obedience at the beginning of the Schism, when the old *scriptores* withdrew from Rome.⁷¹

Accordingly, under Urban VI, a *scriptor et corrector* of the penitentiary, Walter of Strassburg, "working in haste because of the great and evident necessity" of such a manual, compiled a new formulary in one volume, based, he tells us, upon the *forme extravagantes*, forms from the formulary of Benedict XII which had been selected and brought up to date by certain previous *correctores*, and forms which he had had occasion to draw up in the course of his own term of office. The new formulary he dedicated to Lucas, cardinal priest of S. Sisto and since 1382 major penitentiary,⁷² with the request that the Pope be urged to follow the example of Benedict XII by appointing a commission of experts to examine and revise Walter's work preparatory to its formal approval.⁷³

⁷¹ "Ex tunc in antea Vualterius de Argentina et alii novi scriptores penitentie per dictum dominum papam positi et deputati subscripserunt litteras penitentie prefate." Note under date of August 28, 1379, in MS Vat. Lat. 5737, f. 58v; MS Ravenna 470, f. 50.

⁷² February 19, 1382. MS Vat. 5737, f. 60v.

⁷³ "Reverendissimo in Christo patri ac domino Luce miseracione etc. tituli Sancti Sixti presbitero cardinali maiori domini nostri penitenciaro Walterus de Argeniteñ alias de Mindrachrigeñ (?) prepositus Brixiensis scriptor et corrector litterarum penitencie domini nostri pape licet indignus reverenciam debitam [et honorem *expunctu-ated*] humilem et devotam.

"Quoniam post correctionem formularii originalis penitencie domini nostri pape de mandato felicitis recordationis domini Benedicti pape xii. per bone memorie dominos Gaucelinum [MS Baucelinum] episcopum Albanensem sancte Romane ecclesie cardinalem maiorem domini nostri pape penitenciarum Gotium [MS Botium] patriarcham Constantinopolitanum et Jacobum episcopum Brixiensem ac abbatem monasterii Montisoliivi [MS Montissarlani], iuris canonici et civilis doctores egregios professores, factam [MS factis], plures de formis ipsis secundum novas concessionem et commissionem super casibus contentis in eisdem per summos pontifices maioribus penitenciaris et regentibus factas sunt mutatae, pluresque postmodum alie forme extravagantes super aliis casibus pro tempore occurrentibus per dictos summos pontifices dictis maioribus penitenciaris concessis de novo facte sunt, que extra formularium predictum tamquam incerte et ignote multis et diversis cartulis et libellis sine omni ordine et extra titulos et rubricas suas vagentur, quas sine ordine reperire scriptoribus antiquis tamquam expertis et in eis diu usitatis grave et difficile non fuit, sed quia exorto scismate dicti scriptores antiqui experti a Romana curia omnes recesserunt novique illis in arte et exercicio ac experientia non similes eis in eorum officium successerunt quibus grave erat dictas formas reperire et intelligere;

"Hac de causa ego Walterus prescriptus ad hoc nomine Dei et sanctissimi in Christo patris ac domini nostri domini Urbani divina providencia pape vi. ac vestre

It does not appear whether Walter's formulary was given official sanction in the way he desired, but the evidence of three manuscripts shows that it passed into current use in the penitentiary and, with no important modifications in its forms beyond the replacement of the name of Lucas by those of his successors, the major penitentiaries Jordanus Orsini, Dominicus Capranica, and Philippus Calandrini, continued to be employed as late as the time of Cardinal Calandrini, who died in 1476.⁷⁴

reverendissime paternitatis dictorumque scriptorum presentium et futurorum utilitatem commodum et quietem, ac peregrinorum et aliorum ad officium penitencie pro remediis eis opportunis ab ipso officio obtinendis confugiendum celerem expeditionem, recollego formas extravagantes predictas et quasdam alias de dicto formulario extractas correctas ad usum modernum et modum novissimum per bone memorie magistrum Benedictum de Parma et magistros Gerardum de Prenis(?) Guillelmi de Herardi et Philippum de Ageduno olim dictarum litterarum correctores, et eas cum nonnullis aliis formis per me super casibus tempore meo occurrentibus factis et correctis et iuxta novas concessiones mutatis et extentis in ordine et titulis ac rubricis secundum ordinem formularii predicti collocavi et in unum volumen cum festinancia propter magnam evidentem necessitatem reduxi; cum protestacione quod formas per me super casibus tempore meo occurrentibus factas et eciam formas formularii predicti necnon formas per dictos correctores antecessores meos tempore suo factas, quas secundum concessiones de novo vobis et aliis maioribus domini nostri penitenciaris et regentibus dicti officii factas mutavi iuxta concessiones ipsas et extendi ad casus tempore presenti magis convenientes et sepius occurrentes, possum reformare et errores meos in ipsis commissis corrigere, presertim in casibus in quibus mihi hoc licitum sit et in quibus hactenus correctores dicti officii eas corrigere ac mutare potuerunt et consueverunt; multaque notabilia bona ad declaracionem formarum ordinationem commissariorum dicti officii et aliorum penitenciariorum maiorum que alias in scriptis non reperiebantur sed per continuum usum interfui et scripsi ne pereant, cum pauci hodie illa forsitan propter magis ardua eis incumbencia usu acquirere et retinere velint vel forte possint. . . ."—Fondo Vaticano, MS 2663, f. 72; not in MSS Vat. 5737 or Ravenna 470.

⁷⁴ The following are the MSS:

Vatican, Fondo Vaticano, MS Lat. 2663, paper, 360 folii (according to the foliation, which is often incorrect), in various hands of the beginning of the fifteenth century. F. 2, "Incipit tabula rubricarum litterarum penitencie." Then follows material on the organization and powers of the office, as indicated above, note 24. F. 72, "Reverendissimo in Christo patri," etc., as printed above. F. 72v, "In primis ne aliquis abutatur formis subscriptis et eciam formis originalis [MS originalibus, corrected from MS Vat. 5737, f. 63] formularii prescripti a quo omnes subscripte sumpserunt originem, notanda et scienda sunt subscripta. . . ." F. 73, "Incipiunt forme de quibus supradictum est in prologo. Primo de symonia. . . ." F. 73v, an act of Lucas as cardinal addressed to the bishop of Constance, dated the kalends of January in the fourth year of Urban VI. F. 273v, matrimonial dispensation addressed by Lucas "Guillelmo filio serenissimi principis domini Karoli Dei gratia Romanorum imperatoris." After f. 299v

Though arranged on the same general plan as the formulary of Benedict XII, the new formulary is much more voluminous. There are, roughly, twice as many forms,⁷⁵ and the extended notes and indications of variants on every subject swell the bulk still more. Thus under the first rubric, simony, the thirty-three forms of Benedict XII's time have increased to one hundred and fourteen or more. In the rubric *De hereticis* the old forms of the days of Gregory IX have disappeared, and in the new forms the Waldenses find a place beside the heretics proper, the Manicheans, but the indications of persons and places have been so generally omitted that no new light is thrown

the forms are mostly in the name of Jordanus, although Lucas still occurs. F. 335v (evidently later), "Dominicus, etc." F. 346, "Explicit," followed by various forms in the name of Jordanus. F. 360v, "Explicit formularium officii penitencie."'

Ravenna, Biblioteca Classense, MS 470, parchment (2+) 311 folii, fifteenth century. On the cover, from "Indice vecchio dei monaci:" "Formularium officii sacre penitencie. Codex membranaceus in folio, qui fuit Dominici Cardinalis Capranice maioris penitencie episcopi Firmani. In prima etenim pagina minio pictum occurrit eiusdem stemma rubro pileo insignitum. . . ." On the first two (unnumbered) folii are various acts relating to the penitentiary and bearing dates from 1437 to 1468. F. 1, "In nomine domini eiusque gloriosissime matris . . . incipit formularium officii sacre penitencie et per modum qui paulo post sequitur suis debitis rubricis et formis continuabitur." At the bottom of the folio the cardinal's arms as described above. Ff. 1-52v contain material from the *Liber penitencie*; cf. above, note 24. F. 53v, "Incipiunt forme de quibus supra dictum est in prologo. Primo de symonia. . . ." The formulary proper, comprising 1151 forms, extends as far as f. 264. Nearly all the forms are in the name of Dominicus, which is often written over a name which has been scratched out, but whose initial J can often be recognized. Occasionally, as on ff. 74, 102v, Jordanus has been left. F. 264v, further material from the *Liber penitencie*. F. 302, "Rubricae sive materie que in formulario seu libello . . . continentur," followed by further documents and tables, including (f. 303) a constitution of Philippus Calandrini for the *scriptores penitencie*, dated Siena, April 8, 1460.

Vatican, Fondo Vaticano, MS Lat. 5737, parchment, 146 folii, fifteenth century. The first sixty-two folii contain a provincial, the constitution *In agro dominico*, and various concessions and faculties of the later fourteenth century; see above, note 24. F. 63v, "Incipit forme de quibus supra dictum est in prologo. Primo de symonia. . . ." The forms correspond in general to those in the other MSS just described, but there are only 372, as numerous gaps occur and the formulary breaks off abruptly at f. 146v. So far as the name of a penitentiary appears, it is regularly that of Philippus, in the full form "Philippus miseratione divina episcopus Albanensis."

⁷⁵ I have counted 988 in the Vatican MS 2663 and 1151 in the Ravenna MS, but it is hardly possible to make an exact enumeration, owing to the difficulty of determining how far the variants suggested in the notes are really different forms.

on the history of these sects.⁷⁶ The rubric treating of schismatics likewise reflects the history of the fourteenth century. There is still room for the adherents of Palæologus, Frederick of Aragon, and Louis of Bavaria, but the principal place is occupied by the recent enemies of the Papacy—Barnabò Visconti, “Joanna of accursed memory, late queen of Jerusalem and Sicily,” the Perugians who opposed Urban V, the Florentines and others who formed the *mala liga* against Gregory XI, the members of the Free Companies which Urban V had forbidden, and especially the followers of the anti-Pope Robert, better known as Clement VII.⁷⁷ Except, however, in such instances as these, the forms contain comparatively few references to specific persons and events, and few illustrations of the popular customs of their time.

We have now followed the various redactions of the official formulary of the penitentiary down to the latter part of the fifteenth century.⁷⁸ Besides the letters issued by the major penitentiary, to which this formulary relates, the minor penitentiaries were empowered in certain sorts of cases to issue letters under their individual seals,⁷⁹ and a *formularium litterarum minoris officii penitentie* is enumerated among the working tools of the office;⁸⁰ but I have not been able to find a copy of such a collection. There is, however, another type of formulary of the penitentiary which deserves investigation, namely, the formularies of petitions. In the papal chancery the reduction of petitions to writing was obligatory at least as early as the beginning of the thirteenth century,⁸¹ and in 1226 Cardinal Guala prepared,

⁷⁶ The only proper names under this head are those of a penitent heretic, Lubertus Stayarde, of the diocese of Grasse (MS Vat. 2663, f. 140v), and the Dominican inquisitor in Tuscany Johannes Bernardi (MS Vat. 2663, f. 141v; MS Vat. 5737, f. 114v; MS Ravenna 470, f. 111v). There is also mention of the Flagellants, MS Vat. 2663, ff. 197, 198.

⁷⁷ MS Vat. 2663, ff. 143–184v; MS Ravenna 470, ff. 112v–144. Another form of Lucas relating to Clement VII is in MS Vat. Lat. 6290, f. 42v.

⁷⁸ I have made no attempt to carry the study later. There is a short formulary in the Vatican library (Fondo Vaticano, MS Lat. 5489) from the time of Gregory XIII. The forms relate chiefly to Italian cases, and most of them are in the name of the major penitentiary Philippus Boncompagni.

⁷⁹ See the constitution *In agro dominico*, ed. Denifle, 212–15.

⁸⁰ MS Ravenna 470, f. 26v, printed above, note 12.

⁸¹ On the subject of the petitions of the chancery see Bresslau, *Urkundenlehre*,

with the Pope's approval, a brief treatise and set of forms for the use of petitioners.⁸² How soon a similar procedure came to be adopted by the penitentiary it is impossible to say. For an important class of letters, the *litteræ confessionales*, oral confession before one of the minor penitentiaries was a necessary preliminary, but the use of petitions, in all probability written, in securing other kinds of letters appears in the formulary of Thomas of Capua, and written petitions are assumed in the constitution of Benedict XII. As examples of formularies of petitions to the penitentiary we have a brief collection which, in the absence of proper names and definite events, there is no means of dating except its occurrence in a manuscript of the very end of the fourteenth century,⁸³ and a more elaborate collection of two hundred and fourteen forms from the latter half of the fifteenth century.⁸⁴

More interesting than such conventionalized formulæ would be the petitions themselves, which, if we may judge from the analogy of the chancery, were likely to preserve a considerable amount of specific detail and local color that was omitted in the papal letters

Vol. I, pp. 680 ff.; and among subsequent publications, Davidsohn, in the *Neues Archiv*, Vol. XVI (1891), p. 638; and Tangl, *Die päpstlichen Kanzleiordnungen* (Innsbruck, 1894).

⁸² Published by Auvray in the *Mélanges de l'École Française de Rome*, Vol. X, pp. 112-17, 251-52. A formulary of petitions from the middle of the thirteenth century has been edited by Teige in the *Mittheilungen des Instituts*, Vol. XVII, pp. 410-14, and by Wahrmund in the *Archiv für katholisches Kirchenrecht*, Vol. LXXIX, pp. 3-19.

⁸³ Vatican archives, Armaria 53, No. 17, ff. 10v-12v, analyzed by Denifle, *Archiv für Literatur- und Kirchengeschichte*, Vol. IV, pp. 237-38.

⁸⁴ Vatican library, Fondo Vaticano, MS Lat. 6290, paper, 135 folii (plus various unnumbered blanks), fifteenth century. F. 66, "Incipiunt supplicationes sacre penitentie super singulis formis dicti officii formularii. Et primo rubrica de matrimonialibus. . . ." to f. 125v. On f. 119v Eugene IV is styled "of blessed memory" and on f. 115v appears a penitentiary Philippus, probably Philippus Calandrini, who seems to have succeeded Dominicus Capranica as major penitentiary upon his death in 1458, and who died in 1476.

A formulary of petitions prepared under Cardinal Scipione Borghese in 1612 is found in various MSS: Siena, MS G. VI, 30; Florence, Biblioteca Riccardiana, MS 285; Paris, Bibliothèque Nationale, MS Lat. 4177.

Some illustration of intercourse with the penitentiary in the earlier part of the fourteenth century is given in the forms of recommendation of petitioners to the penitentiary contained in the formulary of Archbishop Frederick of Salzburg. Lang, *Acta Salzburgo-Aquilejensia*, Vol. I, pp. 189, 194, Nos. 241₂₆ and 241₃₆.

based upon them.⁸⁵ But while in the chancery such petitions were carefully enrolled in registers from the beginning of the fourteenth century, Benedict XII ordered that petitions to the penitentiary should be returned to the petitioners or their representatives,⁸⁶ and I know of no evidence that they were registered before the fifteenth century.⁸⁷ There is extant, however, in the Vatican archives a group of forty *supplicationes penitentie diversorum casuum*,⁸⁸ possibly copied to serve as models, but retaining generally the proper names of the originals and sometimes the *Fiat* which showed that the petition had been granted.⁸⁹ The manuscript in which they are found belongs to the very end of the fourteenth century, and the absence of any documents from France or Spain in a collection which contains petitions from Germany, Italy, Hungary, and even distant England, Poland, and Portugal, points to the period of the Schism and the territory of the Roman obedience. While some of the documents are brief and have nothing distinctive, others narrate the facts of the case with a freshness and circumstantiality which take us at once into the daily life of the times. A Prussian priest is sitting in his house after dinner one Palm Sunday, when a man who has been drinking comes in and begins to abuse him with "bad, insulting, and opprobrious words and threats." In spite of repeated requests to leave, he begins to throw things at the priest, and finally makes for him with a sheath-knife. The priest defends himself with "a small knife such as is used for cutting bread at table," and he now begs to be relieved from the irregularity of causing the layman's death, "as it was about the first hour of the night and the doors of the house were closed so that it was not possible to escape in safety."⁹⁰ Among

⁸⁵ See on this point Denifle, *La désolation des églises . . . en France* (Paris, 1897), Vol. I, p. xvii, and the numerous illustrations throughout the volume.

⁸⁶ Constitution *In agro dominico*, ed. Denifle, 211.

⁸⁷ The bull *Prudens paterfamilias* of Eugene IV in 1438 (see *ante*, note 9) shows that it was then the practice to register certain classes of petitions.

⁸⁸ Armaria 53, No. 17, ff. 26-35. On f. 27 is a letter of Franciscus, cardinal priest of S. Susanna from 1385 to 1392.

⁸⁹ F. 28v, "Fiat de speciali gratia et componat cum camera iuxta formam V . . j." F. 31, "Fiat de speciali G. j." On similar forms in the registers of petitions to the chancery see Kehr, "Bemerkungen zu den päpstlichen Supplikenregistern des 14. Jahrhunderts," *Mittheilungen des Instituts*, Vol. VIII (1887), pp. 84-102.

⁹⁰ This petition (f. 31) may serve as a specimen:

"Exponit S. V. Johannes Somervelt de Kichenbach presbyter Pomizaniensis dioce-

the other petitioners we find a Polish sacristan redeeming stolen plate from a Jew; a treasurer of the cathedral of Kammin, who had been called from the enjoyment of a repast with his friends to interfere in a brawl between clerks and fishermen on the ice behind the town; a canon of Lisbon, who had quarreled with a priest in church and come to blows with him when they got outside, so that he finally drew a large knife and inflicted "one great blow on the head with breaking of bones and very great shedding of blood;" and a Benedictine monk of the diocese of Lucca, who at the age of fourteen, while acting as tutor in "grammar or the first letters" in the family of a citizen of Florence, had, with fatal results, struck a serving-maid "with a certain ferule such as is used for chastising boys." Documents such as these have a value beyond the light they throw on procedure before the penitentiary. By bringing us face to face with the concrete cases with which the penitentiary had to deal, they remind us that it was concerned with life as well as with matters of canon law and administrative practice, and that its influence was

sis quod [*supply* cum] ipse olim post cenam in die dominica palmarum in domo habitationis sue sedisset, quidam laicus dictam domum intrando exponentem malis iniuriis ac obprobriis verbis et minatoriis male tractando, exponens dictum laicum sepe et sepius rogavit ut ipsum in pace dimitteret, laicus vero plus et plus exponentem maledixit. Exponens ad laicum dixit illa vel similia verba, Si non satis bibisti, bibe melius de ista amphora, de qua comites in tabula bibere solebant; quare dictus laicus ira motus dictam amphoram in tabula arripuit et post exponentem proiecit, ipsum tamen non tangendo. Deinde idem laicus quandam lagenam post exponentem proiecit, ipsum tamen non tangendo. Exponens iterum dictum laicum petiit ut ipsum in pace dimitteret, laicus vero predictus petitionibus exponentis minime curans [*sed*] quandam cultellum de vagina extraxit et post collum exponentis figendo percussit. Iterum ipsum laicum rogavit ut ipsum exponentem in pace dimitteret et secundario iterum dictus laicus in exponentem cum dicto cultello irruit animo et intencione ipsum interficiendi. Quod cum vidisset exponens sibi periculum mortis imminere, vim vi repellendo quandam cultellum parvum cum quo panes in tabula sindere solebat de vagina extraxit et ante se manu tenuit, et sic dictus laicus in exponentem irruendo se ipsum in dicto cultello exponentis in pectore se ipsum vulneravit, de quo vulnere post hoc ex factum (?) nona die expirasse dicitur. Cum autem, P. S., hoc factum hora prima vel quasi noctis perpetratum fuit et porte predictae domus clausae iam fuerunt quod evadere sine periculo mortis commode non potuit;

"Supplicat igitur S. V. dictus exponens quatinus ipsum actione premissorum nullam irregularitatis maculam incurrisse declarare vel saltem si opus fuerit ad cautelam secum super premissis si aliquam irregularitatis notam incurrit misericorditer dignemini dispensare. Fiat de speciali G. j."

felt not only in Rome, but in the remotest regions of Catholic Christendom.

The fees collected for the various kinds of letters issued by the penitentiary, the so-called taxes, naturally stand in close relation to the formularies, and tax-list and formulary are often found in the same volume. The earliest known schedule of these clerical fees is that drawn up by order of Benedict XII in 1338 on the basis of the new edition of the formulary, and published for the first time by Denifle in 1888.⁹¹ Another tax-list is known which belongs to the latter part of the fifteenth century, and was first printed at Rome in 1479; its character and authenticity, long the subject of controversy between Catholic and Protestant, seem now established,⁹² but its relations to the earlier list and to the formularies have still to be determined.

Besides the material for the history of the penitentiary contained in documents, there is doubtless something to be gleaned from literary sources, and especially from treatises on the *forum internum* written by men connected with the penitentiary. The great canonist Raymond of Peñafort was a papal penitentiary under Gregory IX;⁹³ the Franciscan Johannes Rigardi, penitentiary under Clement V, dedicated his *Formula Confessionis* to the major penitentiary Berengar of Tours;⁹⁴ while the Spaniard Andreas Didaci, dedicating

⁹¹ Denifle, "Die älteste Taxrolle der apostolischen Pönitentiarie," *Archiv für Literatur- und Kirchengeschichte des Mittelalters*, Vol. IV (1888), pp. 201 ff. The text is based upon MS 594 of the Bibliothèque de Tours and an inferior MS in the Vatican archives. There are several other MSS in the Vatican which Denifle might have used to advantage. Copies from the fourteenth century are in MS Ottoboni 333 of the Vatican, f. 130v, and MS Vienna 415, f. 15; and the taxes also appear in the following MSS of the fifteenth century: Fondo Vaticano, MSS 2663, f. 30v; 3994, f. 9v; 5737, f. 17; 5744, f. 11v; 6290, f. 35; MS Reg. Svec. 1796, f. 14; Ravenna, MS 470, f. 15. Incomplete texts from the fourteenth century are in the Graz MSS 583, f. 5; 1430, f. 17.

⁹² See on the whole subject the article of Denifle just cited, and Lea, "The Taxes of the Papal Penitentiary," *English Historical Review*, Vol. VIII (1893), pp. 424-38.

⁹³ For his writings concerning the *forum conscientiae* see von Schulte, *Geschichte der Quellen und Literatur des canonischen Rechts* (Stuttgart, 1877), Vol. II, pp. 408 ff.; Dietterle, "Die Summae Confessorum," *Zeitschrift für Kirchengeschichte*, Vol. XXIV, pp. 530-42; *Raymundiana* (Rome and Stuttgart, 1901), Part II, pp. 29 ff.

⁹⁴ Von Schulte, *loc. cit.*, Vol. II, 425, 532; Schmitz, *Die Bussbücher* (Düsseldorf, 1898), Vol. II, p. 727.

in 1429 his *Lumen Confessorum* to the major penitentiary Jordanus Orsini, not only gives some account of the conditions prevailing in the office, but brings forward definite suggestions for its reform.⁹⁵ For works of this sort, as well as for other material relating to the penitentiary, it would be worth while to explore what survives of the libraries of the cardinals who were in charge of the office.⁹⁶

Last of all, it should be observed that, while the most important sources for the history of the penitentiary are to be found in the material emanating from the bureau itself, there is also something to be got from the records of other departments of the papal administration. Besides the incidental information scattered through the registers of papal letters, there is much to be learned concerning the personnel of the office and its maintenance as a part of the papal household from the records of the Camera, especially the *introitus et exitus* and the registers of officials. Of all this there is as yet but little in print.⁹⁷

After the account which has been given of the sources for the history of the penitentiary it is unnecessary to speak at length of the subjects which await investigation. There is scarcely a topic connected with the penitentiary in the later Middle Ages upon which fresh light cannot be thrown. To begin with, the whole history of the organization and procedure of the penitentiary has still to be

⁹⁵ Stapper, "Das 'Lumen Confessorum' des Andreas Didaci," *Römische Quartalschrift*, Vol. XI (1897), pp. 271-85. For other MSS see von Schulte, Vol. II, p. 440; Schmitz, Vol. II, pp. 722, 723; and the notice of a *Lumen Poenitenciarorum seu Confessorum* in St. Petersburg, *Zeitschrift für Kirchenrecht*, Vol. V, (1895), p. 258, No. 290.

⁹⁶ Thus Bentevenga's register seems to have come into the library at Assisi along with the MSS of Matthias of Acquasparta, and the formulary of Albornoz is still among his papers in the College of Spain at Bologna. Cardinal Orsini's copy of the *Lumen Confessorum* passed with the rest of his books into the chapter library of St. Peter's, while Dominicus Capranica was the owner of the Ravenna MS 470, and probably of MS 3994 of the Fondo Vaticano.

⁹⁷ See the lists of officials of the curia and their allowances published by Haller in the *Quellen und Forschungen aus italienischen Archiven*, Vol. I, pp. 26, 27, 31, 32, 38. For illustrations from the current accounts of *introitus et exitus* see the *Regestum Clementis Pape V.*, Appendix, pp. 4-175; Kirsch, *Die Rückkehr der Päpste Urban V. und Gregor XI. von Avignon nach Rom* (Paderborn, 1898), index; Eubel, "Aus den Ausgabebüchern der Schisma-Päpste Klemens VII und Benedikt XIII," *Römische Quartalschrift*, Vol. XVIII, pp. 341-45. The value of the cameral registers of officials has been shown by the list of penitentiaries received between 1347 and 1352 published by Göller, *Römische Quartalschrift*, Vol. XVII, pp. 414-17.

written, and for every period the preliminary studies are lacking. This is notably true for the period which precedes the pontificate of Benedict XII, where the difficulty is increased by the fragmentary character of the material as yet available. This pope indeed says, on the authority of "a certain ancient book," that the functions of the office were in early times performed by the cardinal priests, and that, when they could no longer find time to hear confessions, penitentiaries were instituted;⁹⁸ but it is not known when this change took place. Penitentiaries are mentioned in the registers of Innocent III⁹⁹ and Honorius III,¹⁰⁰ and often accompany the papal legates of this period;¹⁰¹ and, as Lea has pointed out, the growth of the penitentiary must have been greatly hastened by the establishment of obligatory annual confession in 1215, so that the formulary of Gregory IX's time which he has edited probably contains "the earliest records of the body, not long after its institution."¹⁰² While, however, this formulary illustrates with considerable fulness the practice of the penitentiary, it tells us very little of its organization. The bureau has a seal¹⁰³ and acts under the Pope's authority, either generally conferred (*auctoritate domini pape*) or given for the particular case (*de speciali mandato domini pape*); but it does not appear in whose name the letters are issued, nor is the bureau anywhere called the penitentiary. There is a reference in one place to "the officials detailed for the office of penance at the apostolic see,"¹⁰⁴

⁹⁸ "Nota quod idem dominus papa Benedictus tunc narravit se habere in quodam antiquo libro quod officium penitentiarii exercebatur antiquitus per presbiteros cardinales, sed crescentibus ecclesie negotiis dicti cardinales non poterant vacare confessionibus audiendis. Ideo loco illorum fuerunt instituti penitentiarii qui habent priorem locum sicut presbiteri cardinales et sunt quodam modo prelati totius mundi."—University of Rome, MS 119, f. 19v, immediately after the tax-list of 1338.

⁹⁹ Bresslau, *Urkundenlehre*, Vol. I, p. 228, n. 2.

¹⁰⁰ Pressutti, *Regesta Honorii Papae III*, index under "Poenitentiarius;" *Chartularium Universitatis Parisiensis* (Paris, 1889), Vol. I, p. 85.

¹⁰¹ Petit-Dutaillis, *Étude sur la vie et le règne de Louis VIII* (Paris, 1894), pp. 162, 172; Levi, *Registri dei Cardinali Ugolino e Ottaviano* (Rome, 1890), p. 22, No. xxiv; Auvray, *Régestes de Grégoire IX*, No. 628; Böhmer-Ficker-Winkelmann, *Regesta Imperii*, Nos. 10109b, 10121, 10136d.

¹⁰² Lea, *Formulary*, p. xxxiii. For other documents illustrating the work of the penitentiary under Gregory IX, see *Raymundiana*, Part II, pp. 17 ff.

¹⁰³ Lea, Nos., XXVII, 1, 6; XXXIV, 3; XLV, LXXXVIII, 1.

¹⁰⁴ *Ibid.*, No. XVII.

various cardinals appear as transmitting petitions and the answers of the Pope,¹⁰⁵ and letters of individual penitentiaries are mentioned;¹⁰⁶ but there is no indication of anyone standing at the head of things. At the same time, we are told in other sources that Thomas of Capua was in charge of the papal administration of penance in 1223,¹⁰⁷ and it seems likely that he and the other cardinals who transmit the commands of the Pope in the formulary were, each in his time, the responsible heads of the body which issues the letters. Under the immediate successors of Gregory IX various penitentiaries may be noted, and a *scriptor penitentiarius* appears;¹⁰⁸ but, as far as investigation has at present been carried, no cardinal is again found connected with the office till we come to Pierre de Tarentaise, cardinal bishop of Ostia from 1273 to 1276—when he became Pope as Innocent V—, who is called *penitentie curam gerens*,¹⁰⁹ the style of the major penitentiaries of the fourteenth century.¹¹⁰ In 1279 the register of Cardinal Bentevenga begins, and the activity of his successors in the administration of the penitentiary—Matthias of Acquasparta, Gentilis, Berengar of Tours, and Gaucelinus—can be traced in the formulary of Benedict XII. In Bentevenga's time likewise begin the series of papal concessions which define the functions of the major penitentiary,¹¹¹ and under Clement V it is decreed that his commission does not expire with the death of the Pope.¹¹² The development of the clerical side of the bureau in this period also appears from the decree of the same Pope reducing the number of *scriptores penitentie* to twelve.¹¹³

¹⁰⁵ *Ibid.*, Nos. XXVIII, 3; LXIII; LXIV; LXVI, 1, 2; XCVI, 1, 2; XCVII, 1, 2; CXLV, 2; CLXXII, 7.

¹⁰⁶ *Ibid.*, Nos. CXIX, 2; CLXIII; cf. No. XXXIII, 2.

¹⁰⁷ See above, note 46.

¹⁰⁸ Bresslau, *Urkundenlehre*, Vol. I, p. 228; Potthast, No. 12993.

¹⁰⁹ Prou, *Régestes d'Honorius IV*, No. 735. On the relation of the cardinals to the penitentiary in this period see Sägmüller, *Die Thätigkeit und Stellung der Cardinäle bis Papst Bonifaz VIII*. (Freiburg, 1896), pp. 105–8.

¹¹⁰ Lang, *Beiträge*, p. 22, n. 3.

¹¹¹ *Ibid.*, pp. 21 ff.

¹¹² Clem. 2 de electione, I, 3, in *Corpus Juris Canonici*, ed. Friedberg, Vol. II, col. 1135.

¹¹³ September 2, 1311, *Regestum Clementis Papae V.*, No. 7359.

The organization of the penitentiary under Benedict XII has long been known in its outlines from the constitution *In agro dominico*, to which the tax-list has recently been added, but the new edition of the formulary issued by this Pope has still to be studied. From his time to the reforms of the sixteenth century the ground is still unbroken. No careful lists of penitentiaries have been drawn up,¹¹⁴ and there are no studies of the development of the office during the period, of its vicissitudes during the Schism, or of its possible relations to the question of reform in the age of the councils. The reorganization of the penitentiary by Eugene IV is a subject of the first importance which still awaits the student.

The diplomatics of the penitentiary is likewise an entirely fresh field. No investigations have yet been made of the various types of documents emanating from the penitentiary, of the titles and seals of its officials, of the various stages through which an act had to pass, of the questions connected with the use of petitions and formularies and registers, of the external form of its letters and the precautions taken against forgery¹¹⁵—in short, of those topics with which students of papal diplomatics have long been busily engaged in the case of the chancery. As in all matters of diplomatics, the foundation must be laid by careful examination and comparison of the original letters of the penitentiary, but there is also much to be learned from the formularies and from the papal constitutions and concessions.

Finally, the finances of the penitentiary still tempt inquiry. Lea

¹¹⁴ The series of major penitentiaries in Moroni's *Dizionario* (Venice, 1851) Vol. LII, pp. 63–65, is far from satisfactory. The beginning of something better has been made by Göller in his list of penitentiaries under Clement VI (*Römische Quartalschrift*, Vol. XVII, pp. 414–17), and by Eubel in his lists for the pontificates of Clement VII and Benedict XIII, (*ibid.*, Vol. XVIII, pp. 341–45). In spite of some obvious inaccuracies, the list of concessions and major penitentiaries preserved in MSS Vat. Lat. 2663, ff. 57v–71; Vat. Lat. 5737, ff. 51–63; Ravenna, 470, ff. 44v–52, is of great importance for the latter half of the fourteenth century.

¹¹⁵ On the forgery of letters of the penitentiary see the "Forma citationis personalis cuiusdam falsarii litterarum penitenciarie" appended to the formulary of Benedict XII in MS Ottoboni 333, f. 82v; MS Vat. 5959, f. 122; MS Vienna 415, f. 120; MS Avignon 336, f. 53v. Cf. also Lea, *Formulary*, p. xxv, n. 2; and Twemlow, *Calendar of Papal Letters* (London, 1904), Vol. V, p. 173.

On the use of blank forms in the time of the major penitentiary Gaucelinus, see Lang, *Acta Salzburgo-Aquilejensia*, Vol. I, p. xci.

has shown what may be learned from the taxes of the penitentiary and the chancery which have so far been published,¹¹⁶ but other such tax-lists may be in existence, and an investigation has still to be made of the relations of the two printed lists to each other and to the formularies upon which they are based. Moreover, these schedules of scribes' fees are only a small part of the story. They tell us nothing of the system of pecuniary penance and its results, and even for the clerical matters with which they deal "the tax in the tables represents only the charge made for one stage in the process, whereas there were several, each of which had to be paid for."¹¹⁷ In the fourteenth century the penitentiaries received a regular allowance from the papal treasury,¹¹⁸ even if it sometimes fell in arrears;¹¹⁹ but in the earlier part of the fifteenth century such maintenance had entirely ceased, and the penitentiaries were wholly dependent upon such contributions, supposedly voluntary, as might be given them.¹²⁰ The fees for a penitentiary's commission had been con-

¹¹⁶ Lea, "The Taxes of the Papal Penitentiary," *English Historical Review*, Vol. VIII (1893), pp. 424-38 (and cf. his *History of Auricular Confession and Indulgences*, Vol. II, pp. 163-67). The taxes of the chancery should be studied in connection with those of the penitentiary: Tangl, "Das Taxwesen der päpstlichen Kanzlei vom 13. bis zum Mitte des 15. Jahrhunderts," *Mittheilungen des Instituts*, Vol. XIII (1892), pp. 1-106; Mayr-Aldwang, "Ueber Expensrechnungen für päpstliche Provisionsbullen," *ibid.*, Vol. XVII, pp. 71-108; Schmitz-Kallenberg, *Practica Cancellariae Apostolicae* (Münster, 1904), pp. 51-62. On the taxes actually assessed by the penitentiary, as seen in the indorsements on its letters, see Lang, *Acta Salzburgo-Aquilejensia*, Vol. I, p. xci.

¹¹⁷ Lea, in *English Historical Review*, Vol. VIII, p. 433. But see the general regulations of the fees of *procuratores*, *sigillatores*, and lesser clerks in the tax-list of Benedict XII, ed. Denifle, pp. 234-36.

¹¹⁸ Lists of allowances to officials of the Curia under Clement V and VI, published by Haller in the *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, Vol. I, pp. 26, 27, 31, 32, 38; *Regestum Clementis Papae V.*, Appendix, pp. 4-175; *Römische Quartalschrift*, Vol. XI, p. 281, Vol. XVIII, pp. 341-45; Kirsch, *Die Rückkehr der Päpste*, pp. lvii, 76, 80, 81, 89.

¹¹⁹ A petition of the penitentiaries for back pay under Urban V is mentioned by Kirsch, *loc. cit.*, p. 239.

¹²⁰ This appears from the *Lumen Confessorum* of Andreas Didaci, who writing in 1429, says that he has served as penitentiary for more than twenty years, under four Popes, and received only alms (*Römische Quartalschrift*, Vol. XI, pp. 281, 282).

siderable under the Avignonese Popes,¹²¹ and from the time of Boniface IX even the *scriptores* regularly purchased their places.¹²² The abuses which would naturally spring from such conditions are obvious, even if not of the kind which would leave a record behind them, and the close connection of the penitentiary with the moral government of the papacy lends peculiar importance to the study of its fiscal relations.

¹²¹ See the Avignonese taxes of the chancery in *Mittheilungen des Instituts*, Vol. XIII, pp. 89, 105, Nos. 165-68, 256, 257; and cf. *English Historical Review*, Vol. VIII, p. 427.

¹²² See the passages from Dietrich of Niem quoted by Sauerland, *Historisches Jahrbuch*, Vol. VII, pp. 637, 638.